tract to sell would also. REED, STATUTE OF FRAUDS, Vol. II, § 370, explains the Mississippi doctrine by saying that "where one party has performed it would be manifestly inequitable to give him neither restitution nor specific performance." But the facts of the principal case show that no doctrine of equitable estoppel here arises. If the contract were not enforced no harm is done for the parties are in statu quo. Even in Pennsylvania, which has heretofore been considered most extreme, possession is required to take it out of the statute of frauds. *Lee* v. *Lee,* 9 Pa. St. 177.

WILLS—IRREGULAR DOCUMENTS SHOWING TESTAMENTARY INTENT—BEQUESTS FOR MASSES.—Decedent, a woman seventy-six years old, executed a note in favor of her daughter or $500, payable in five years and secured by a mortgage on real estate. At the same time she directed the scrivener, a justice of the peace, to make a memorandum, which she signed, reciting that this mortgage and note for $500 were given to be "distributed" by the daughter after the decedent's death, $300 to the priest of St. Patricks church for masses for the repose of decedent's soul, $100 as a gift to another sister, and the remainder to be kept by the payee of the note. Suit was brought on the note at maturity, some time after the maker's death. *Held,* (1) that the note and mortgage were not contractual but testamentary and were effective only as a will; (2) that the bequests for the masses were void; and (3) that the gifts to the plaintiff and her sister were valid. *McCourt* v. *Peppard et al.* (1905), — Wis. —, 105 N. W. Rep. 809.

It was contended that the note was not a will but a contract, as it was contractual in form, drawn in apt terms for a present contract, was a definite promise to pay a sum certain at a fixed future date without mention of the contingency of death, and bore interest payable annually. In the absence of facts showing a testamentary intent such an instrument is a contract. An instrument made in the form of a promissory note, but payable after the maker's death, is a promissory note and not a will. *Bristol* v. *Warner,* (1848), 19 Conn. 7; *Price* v. *Jones* (1885), 105 Ind. 543, 5 N. E. Rep. 683, 55 Am. Rep. 230; *Freeser* v. *Freeser* (1901), 93 Md. 716, 50 Atl. Rep. 416; *Garrigus* v. *Society* (1891), 3 Ind. App. 91. In the principal case the court found such evidence of testamentary intent in the age of the maker, the use of the word "keep," and the fact that all the acts specified must necessarily have been done after her death. The instrument though testamentary in character was not executed with the formalities required by the statute, and it does not appear upon what ground the court gave it effect as a will. A direction to pay at decedent's death is not a promissory note but a will, and if not executed in accordance with the statutory requirements is void. *Cover* v. *Stem* (1887), 67 Md. 449. See also ROOD ON WILLS, § 60. It is possible, although it is not so stated, that the court considered the attestation of the mortgage sufficient to meet the statutory requirements, but the holding in that regard seems to be against the weight of authority. *Cover* v. *Stem,* supra. The court without discussion held that the bequests for masses for the repose of the decedent's soul were void, apparently upon the authority of *McHugh* v. *McCole* (1897), 97 Wis. 166, 65 Am. St. Rep. 106, where a similar bequest was held to be void as creating a private trust without naming a definite

beneficiary capable of enforcing it. Three doctrines obtain in the United States as to the validity of bequests of this nature; (1) that they are valid charitable trusts. *In re Schouler* (1883), 143 Mass. 426; *Kerrigan* v. *Tabb,* N. J. Eq. (1898), 39 Atl. 701; *Seda* v. *Hubbell* (1898), 75 Ia. 429; *Hoeffner* v. *Clogan* (1898), 171 Ill. 462, 63 Am. St. Rep. 241; (2) that they are private trusts and void for lack of a definite beneficiary, *McHugh* v. *McCole,* supra; *Festorazzi* v. *St. Joseph's Church* (1893), 104 Ala. 327, 18 So. Rep. 394, 25 L. R. A. 360, 53 Am. St. Rep. 420; *Holland* v. *Alcock,* 108 N. Y. 312, 2 Am. St. Rep. 420; *contra, Moran* v. *Moran* (1897), 104 Ia. 216; (3) that they are valid gifts for a legal purpose if made to a named person. *Harrison* v. *Brophy* (1898), 59 Kas. 1, 51 Pac. 883; *Sherman* v. *Baker* (1890), 20 R. I. 447. The distinction drawn in the *McHugh case* between gifts to officers of a named church in their official capacity and to the same officers as private individuals is important as indicating the necessity of definiteness in naming the beneficiary, although there is nothing inconsistent with a definite gift in either expression. In England bequests for masses are regarded as superstitious uses and therefore void. In *re Blundell's trust* (1861), 30 Beav. 360; *West* v. *Shuttleworth* (1835), 2 MYLNE & K., 685. But this doctrine is not approved by the American courts because of the absence of a standard orthodoxy by which to determine what is a superstitious use.